## UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

VIRGINIA MASON HOSPITAL, (a division of VIRGINIA MASON HOSPITAL CENTER)

and

Case No. 19-CA-30154

WASHINGTON STATE NURSES ASSOCIATION

## WASHINGTON STATE NURSES ASSOCIATION'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

Pursuant to Section 102.46(a) of the Board's Rules and Regulations, the Washington State Nurses Association excepts to the findings and conclusions of the Administrative Law Judge's Decision, for the reasons set forth in the Washington State Nurses Association's Brief in Support of Exceptions, filed herewith, in the following ways:

- 1. The ALJ erred in determining that "it seems clear and unmistakable that language in the management-rights clause, which gives the Hospital the authority 'to determine the materials and equipment to be used [and] to implement improved operational methods and procedures,' would include requiring nurses who have not been immunized against the flu and who have declined to take antiviral medication to wear a facemask when in contact with patients, fellow employees, and visitors to the Hospital." (p. 6, lines 20-25)
- 2. The ALJ erred in determining that the Hospital's mandatory masking policy is "simply an extension of the infection control guidelines already in effect, which is clearly permitted under the language of the management-rights clause." (p. 6, lines 25-27).

- 3. The ALJ erred in relying on testimony that the Nurses had not challenged other infection control rules requiring face masks in limited circumstances to support his finding that the Nurses had waived their right to bargain over the mandatory masking policy in all areas of the hospital. (p. 6, lines 33-39).
- 4. The ALJ erred in finding that because a facemask "is obviously equipment under the Hospital's Infection Control Policy" the management rights clause authorizes the Hospital to unilaterally create rules related to face masks and enforce them with discipline. (p. 6, lines 41-47).
- 5. The ALJ erred in concluding that under the clear and unequivocal waiver test the Union waived its right to bargain over the rule requiring the wearing of face masks in all areas of the Hospital for non-immunized nurses. (p. 6, lines 47-51)
- 6. The ALJ erred in determining that the arbitrator had determined in the preexisting mandatory immunization arbitration that there had been negotiations between the parties over the issue. (p. 7, lines 22-24)
- 7. The ALJ erred in holding that by agreeing to the management rights clause the Union had waived its right to bargain over the mandatory face mask policy and that the Employer's action in implementing it did not constitute an unfair labor practice. (p. 7, lines 33-41)
- 8. The ALJ erred in dismissing the complaint, paragraph 8 and all its subparagraphs.

DATED at Seattle, Washington this 5th day of January 2012.

Lawrence Schwerin, WSBA # 4360

Schwerin Campbell Barnard Iglitzin & Lavitt LLP 18 West Mercer Street, Suite 400 Seattle, WA 98119 (206) 285-2828 (206) 378-4132

## CERTIFICATE OF SERVICE

I hereby certify that on this 5<sup>th</sup> day of January 2012, I caused the original Washington State Nurses Association's Exceptions To The Decision Of The Administrative Law Judge and Brief In Support of Exceptions to be filed with the National Labor Relations Board via electronic filing, and eight copies of the same placed in the overnight mail addressed to:

Executive Secretary National Labor Relations Board 1099 14<sup>th</sup> Street NW Washington, DC 20570

And true and correct copies of the same to be delivered via legal messenger to:

Richard Ahearn Richard Fiol National Labor Relations Board, Region 19 2948 Jackson Federal Building 915 Second Avenue Seattle, WA 98174-1078

Mark A. Hutcheson Davis Wright Tremaine LLP 2600 Century Square 1501 Fourth Avenue Seattle, WA 98101-1688

Lawrence Schwerin